In the High Court of judicature of Chattisgarh at BILASPUR.

Criminal Appeal No. 540 /2001

Appellant : R.P.Satyanarayan son of Ramkrishna aged 29 years, resident of Purani Police Line Konta, District Dantewada(Chattisgarh)

Vs.

Respondent : State of Chattisgarh through District Magistrate, Dantewada(Chattisgarh)

Appeal under section 374(2) of the Criminal Procedure Code against the judgment and sentence dated 10-4-2001 passed by Shri A.R.Dhurva, First Additional District and Sessions Judge, Jagdalpur(Bastar)in Sessions Trial No. 217/2000 convicting the appellant under section 302 Indian Penal Code for life long imprisonment and fine of Rs. 2000/- in default additional 6 months rigrous imprisonment.

2329

Pleld on 22-6-2001 by Shri J.P. Mishra Advocate

R. to AR

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

23

आदेश पत्रक

मामला क्रमांक CrA 540/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 540 of 2001

Appellant : R.P. Satyanarayan

Vs.

Respondent : State of Chhattisgarh

Ms. Nirupama Bajpai learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri M.P.S. Bhatia learned P.L. for the respondent/State.

ORAL JUDGMENT

(17.02.2006)

Per L.C. Bhadoo, J

The accused/appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure questioning the legality and correctness of the judgment of conviction and order of sentence dated 10.4.2001 passed by the Additional Sessions Judge, Jagdalpur in Sessions Trial No. 217/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life and pay fine of

[पीछे देखिये

A

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA 540/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rs.2000/- , in default of payment of fine to further undergo RI for six months.

2. Prosecution case in brief is that on 20.2.2000 Hari Mehta lodged a report in Police Station Konta to the effect that in the evening at about 20.15 hours when he was taking his dinner at his residence, he heard the screams " save save ". On hearing the screams he came out of his house and saw that constable P. Satyanarayan came carrying wooden club in his hand and tried to assault Sandeep on his head but the blow was obstructed by a wire which was tied for the purpose of drying the cloths. In the meanwhile, he caught hold of P. Satyanarayan. Sandeep disclosed that accused has assaulted his mother on her head with the wooden club and she was lying in front of the gate of his house. On hearing this he went to the house of Sandeep and saw that Leelabai was lying in the pool of blood and the blood was oozing out of her head and ear, on which he along with Sukalu and one other person took Leelabai to the hospital where the doctor declared her dead. On receiving this report Rakesh Modi, Sub Inspector PW-6 registered the case for the commission of the offence under sections 302 and 307 of the IPC, left for the scene of occurrence and prepared the site plan P-6 and Panchnama of the body of Leelabai P-1. While in Police custody the accused gave memorandum P-2 regarding the place where he kept the wooden club and in pursuance of that memorandum weapon of the offence i.e. teak wooden club was taken into possession under P-3. Injuries sustained by Sandeep

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 540/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were examined by Dr. P.S. Shandliya PW-5 and the injury report is P-6. Dr. P.S. Shandliya posted at Primary Health centre Konta conducted the post mortem examination on the body of Leelabai and prepared the post mortem report P-7. Investigating Officer took into possession the blood stained and plain soil from the place of occurrence. He also took into possession broken pieces of green bangles. Opinion of the doctor was sought as to whether the injuries which were found on the body of Leelabai can be caused by the wooden club in question and the doctor gave his opinion P-8 stating therein that the injuries caused to Leelabai can be caused by, that wooden club. Clothes of Leelabai were taken into possession under P-12. After completion of the investigation charge sheet was filed against the accused for the commission of offence under sections 302 and 307 of the IPC in the Court of Judicial Magistrate First Class, Sukma who in turn committed the case to the Sessions Judge Ambikapur from where learned Additional Sessions Judge received the case on transfer for trial.

3. In order to establish the charge against the accused/appellant the prosecution has examined six witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and examined three witnesses in defence. Learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and counsel for the accused/appellant

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

26

-3-

आदेश पत्रक

मामला क्रमांक Cr.A.-540/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

4. We have heard learned counsel for the parties and perused the evidence available on record.

5. Homicidal nature of death of Leelabai is not in dispute.

6. As far as involvement of the accused in the commission of the crime in question is concerned, learned counsel for the accused/appellant argued that as it was a dark night, it was not possible for Sandeep to see as to who caused the injuries to his mother. She further argued that even if the case of the prosecution is taken on its face value as it is, the offence against the accused/appellant does not travel beyond section 304-II of the IPC for the reason that the accused had no intention to cause the death of Leelabai as he assaulted only once with a wooden club.

7. On the other hand learned counsel for the respondent/State supports the impugned judgment of the trial Court.

8. In order to appreciate the arguments advanced by the counsel for the accused/appellant we have perused the evidence of the prosecution witnesses. PW-1 Sandeep, the son of the deceased has stated in his evidence that on the fateful day when he was returning from the temple he saw that her mother was opening the door and the accused was assaulting her with the ~~said~~ wooden

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

27

आदेश पत्रक

-5-

मामला क्रमांक Cr.A. 540/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

club on her head and he raised screams to save his mother. He entered the house of neighbour Hari Mehta after opening the door who was taking dinner at that time, and requested him to save him as the accused chased him and tried to assault him with the wooden club but the blow was obstructed by a wire hanging in the house of Hari Mehta and thereafter Hari Mehta caught hold of him and then he along with Hari Mehta went towards his house and saw that his mother was lying on the ground. Thereafter, he along with Hari Mehta and Sukalu took his mother to the hospital where she was declared dead. In the cross examination this witness has stated in paragraph No. 8 that it is true that there was no light on the road but in paragraph 9 of his cross examination he stated that there was light in the house and therefore he was able to see that the blow was given by the accused. He has further stated that accused assaulted his mother on her head twice. PW-4 Hari Mehta has corroborated the above evidence and stated that accused was chasing Sandeep and he tried to assault Sandeep with the wooden club but the blow was obstructed on account of a wire hanging in his house and thereafter Sandeep said that accused has assaulted his mother and she is lying on the gate. They went there and saw that blood was oozing from the mouth and nose of Leelabai. There was injury on her head. Thus the evidence of Sandeep is corroborated by Hari Mehta who is an independent witness and the defence has not been able to elicit anything to make the evidence of this witness untrustworthy or unreliable. Further the evidence of

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CR.A. 540/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

this witness has been corroborated by Dr. P.S. Shandilya PW-5 who has stated that he conducted the post mortem on the body of Leelabai and found that there was blood in the right portion of her nose, there was injury on the occipital region on the right side and there was one injury on her shoulder and on opening the body he found that there was fracture of skull and the injuries were caused by hard and blunt object and death of Leelabai was on account of cerebral hemorrhage and fracture of skull. Therefore, the above medical evidence corroborates the evidence of eyewitness Sandeep and there was motive also to assault the deceased. PW-3 Pramila Nage, the constable in the police department has stated that on the same day she was going to mark her presence in the police station, at that time Leelabi asked her that she would also go to the police station as accused Satyanarayan has quarreled with her in connection with cleaning of the drain, and for that Leelabai lodged the complaint in the police station and on the same day the accused assaulted Leelabai. Therefore, involvement of the accused in crime in question is established and we do not find any illegality in the findings recorded by the trial Court in this regard.

9. As far as the question of conviction of the accused under section 302 of the IPC is concerned, there is evidence that the accused assaulted the deceased on her head with the wooden club. Looking to the nature of the weapon of offence and the number of injuries and the fact that the accused assaulted the deceased on petty matter as there was quarrel between the two during the daytime

[पीछे देखिये

XI-HC-22

29

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

-7-

आदेश पत्रक

मामला क्रमांक CR.A.No./01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

regarding cleaning of drain on which deceased lodged the report which enraged the accused and he came with club and assaulted the deceased. Therefore, in view of the above facts intention of the accused to cause death of the deceased has not been established but the manner in which the accused assaulted the deceased with the club on head, knowledge can be attributed to the accused that he was knowing that the injury which he was causing may cause the death of Leelabai, therefore, the offence against the accused/appellant does not travel beyond section 304-II of the IPC.

10. In the result the appeal partly succeeds. Conviction awarded to the accused/appellant under section 302 of the IPC is set aside instead the accused/appellant is convicted under section 304-II of the IPC and sentenced to undergo RI for 6 years. Accused/appellant is stated to be in custody since 21.2.2000 and therefore, the period for which accused has been in detention during trial and appeal, shall be entitled for set off against the above sentence. In other words the accused/appellant shall be entitled for the set off for the above period.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

[पीछे देखिये